IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4290 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HASMUKH SURJITSING PUNJABI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4290 of 2002

MR BANNA DATTA FOR MR AR SHAIKH for Petitioner No. 1

MR A.Y.kogje, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 19/06/2002

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated

13.12.2001 passed by the Commissioner of Police, Surat City (Annex.A) in exercise of the powers vested in him by Section 3(2) of The Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded as "bootlegger" and is placed under detention.

2. Ms. Banna Datta, ld. counsel appearing for Mr. A.R. Shaikh,ld. counsel for the petitioner, has submitted that the last offence registered against the petitioner is dated 22.8.2001 and thereafter the order of detention is passed in the month of December,2001 tobe precise, on 13.12.2001, which can be said to have been passed at a belated stage. Delay caused in passing the order of detention goes to the root and vitiates the credibility of the order of detention. It is further submitted by Ms. Datta that order under challenge is passed without application of mind. In support of her say, she has taken this Court through all the relevant papers produced by the petitioner which were supplied to him at the time of serving grounds of detention to him. In the two statements allegedly recorded on 14.9.2001 by the Police Inspector, Chowk Bazar Police Station, Surat City, annonymous witnesses have referred to the incident allegedly occurred on 16.9.2001 and 29.9.2001 respectively. A pointed question has been raised by ld. counsel Ms. Datta that how witnesses could have narrated the incident on 14.9.2001 which had not occurred at all on the date of recording of the statement, but alleged to have occurred on subsequent date i.e. on 16.9.2002 or on 29.9.2001. This submission is made in reference to the delayed order and verification of the statements at a belated stage i.e. on 11.12.2001. The ld. counsel Ms. Datta has mainly focussed her arguments on this ground and has submitted that only on this ground, the order of the detention should be quashed.

3. In response to the query raised by this Court and with a view to meet with the arguments advanced by ld. counsel appearing for the petitioner, ld. AGP Mr. Kogje, after referring to the original file available to him and parawise remarks received by the office of the government pleader, has fairly submitted that some error which is apparent on record has occurred in this case. Bonafide mistake even if committed, could have been cured at a later stage. But in this case, such an endeavour has not been made either by sponsoring authority or by the detaining authority. The incident occurred on 16.9.2001 or 29.9.2001, obviously cannot be narrated by a person in his statement recorded on 14.9.2001. However, these statements are verified by detaining authority

mechanically and have been used in forming the opinion for recording subjective satisfaction reflected in the order of detention. As per the settled legal position, detaining authority is obliged to pass the order of detention after proper application of mind considering each paper placed before it by the sponsoring authority. In the present case, the detaining authority has not applied its mind at the time of passing the order of detention which has adversely affected the validity of the order. Under the circumstances, impugned order of detention cannot sustain on the ground of non-application of mind or mechanical application of mind and on the ground of delay in passing the order.

4. For the reasons aforesaid, this petition is allowed. The impugned order of detention dated 13.12.2001 passed by the Commissioner of Police, Surat City against the detenu is hereby quashed and set aside. Detenu Shri Hashmukh Surjitsingh Punjabi is hereby ordered to be set at liberty forthwith if not required to be detained in any other case. Rule is made absolute.

Direct service is permitted.

19.6.2002 [C.K. BUCH, J]

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